

**House Bill 1366**  
**Testimony before Senate Transportation Committee**  
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**Automobile Dealers Association of North Dakota**  
**Pioneer Equipment Dealers Association**  
March 11, 2021

03/07/21

Mr. Chairman and members of the committee. My name is Matthew Larsgaard, and I am appearing in support of House Bill 1366 on behalf of the Automobile Dealers Association of North Dakota and the Pioneer Equipment Dealers Association. Collectively, these organizations represent over two hundred of our state's franchised new car and farm equipment dealerships.

In many cases, when a motor vehicle, tractor, or other farm equipment breaks down, the owner of the property will ask a dealer to fix it. The dealer conducts the repair after the customer has agreed to the repairs and the cost. The vast majority of customers pay for the repairs that they have asked for. The problem exists with the few that do not. That is why the Repairman's Lien law was created. It gives the repairman an opportunity to place a lien on property and retain possession of it until the repair bill is paid.

The purpose of the Repairman's Lien law is to protect the investment of parts and labor the repairman adds to the property. It is important to understand the vast majority of these repairs also increase the value of the property.

In many instances, both a lender and a repairman will have a lien on the same piece of property. In this case, there is a question of lien priority, or who gets paid first: the lender or the dealer? Current law allows the repairman's lien on farm equipment to have first priority only up to the greater of \$9,000 or 30% of the value of the equipment in its repaired condition. The threshold for motor vehicles is currently the greater of \$4,000 or 30% of the vehicle value.

The Issue:

From time to time, customers ask our dealers to repair low-value vehicles, tractors, or other equipment. In some instances, the value of the repair is close to the value of the property in its repaired condition. As a result, we have had many people decide to abandon vehicles and equipment at our dealerships and forgo paying the repair bill. In some cases, the owner simply tells the dealer that they are not going to pay the repair bill and the dealer may keep the property. In other cases, individuals simply abandon the property and do not respond to our repeated attempts to communicate with them. This was especially prevalent in Western, ND after the downturn in the oil sector. Some of our dealers have had abandoned property sitting on their lots for years.

In these situations, the dealer must initiate lien foreclosure proceedings in order to get paid and dispose of the property. Under current law, the only way for a repairman to foreclose on their lien is to sue the property owner and pursue a judgment against them. This is often a burdensome and time-consuming task. In addition, it is also costly for the owner and any lienholders because the expenses associated with the judgement process are taken out of the sales proceeds....which doesn't benefit anyone.

Furthermore, dealers do not want to have to sue someone for a \$4,000 repair bill on car that's worth \$3,500. Dealers don't want that person to have a **judgement on their record** simply because they don't pay the repair bill. This legislation provides the solution.

HB 1366 was originally modeled after the abandoned motor vehicle bill that was passed last session (HB 1263). However, at the request of our banking colleagues, we worked with them to develop an amendment which replaced our proposed sales provisions with the provisions that are already outlined within the Uniform Commercial Code. Those amendments are reflected within Section 5 of the bill.

HB 1366 Notes:

- 1) Allows a repairman who is a lienholder to sell property subject to a lien without bearing the **undue burden and cost of taking the matter to court.** (NDCC 41-09-107)
- 2) At least 10 days before selling the property, the repairman must send notice to all interested parties including: the owner, all lienholders, and all secured parties. (NDCC 41-09-109)
- 3) The **owner, lienholders, or secured parties may** pay the repair bill (lien) and **reclaim the property** at any time prior to the sale. (NDCC 41-09-118)
- 4) Requires the repairman to **return to the owner and lenders any sales proceeds that remain** after the repairman's lien priority has been satisfied. (NDCC 41-09-111)
- 5) Allows a repairman to **recoup costs** associated with storage and transportation of property subject to a lien, **which can be a significant expense for the repairman.**
  - **NOTE:** HB 1366 adds a level of consumer protection by prohibiting a repairman from charging storage until just over two weeks (15 days) have passed since the owner was asked to come and get the property.
- 6) **Not all of these vehicles and equipment are subject to a banker's lien.**
  - However our dealers have an investment and lien on EVERY single one of these vehicles and equipment and need to dispose of them.
- 7) The sale provision **applies only to property** that a **repairman has possession of.**
- 8) HB 1366 **adjusts for inflation the lien priority thresholds.** Under current law, only that portion of the repairman's lien up to the greater of (\$4,000 auto)(\$9,000 Ag) or 30% of the value of the property has priority over a lender's lien. This bill adjusts for inflation the static thresholds to (\$6,000 auto)(\$15,000 Ag equipment).

It is important to understand that, in some cases, the adjustment to the static lien priority thresholds only helps to close the gap between our dealers' repair bills and the amount that they are actually able to collect. In many cases, the bank will still be able to collect money that should be paid to the dealer.

## **Exhibit A: Realistic Scenario Under Current Law:**

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A bank has a mortgage on 100% of the value of a tractor. The tractor, worth \$45,000, blows an engine. The dealer replaces the engine and makes other repairs totaling \$25,000.

Tractor value before break-down: \$45,000

Repair cost: \$25,000

**Tractor value after break-down: \$20,000**

At this point in the scenario the bank has experienced an unrealized loss of \$25,000. The risk that they took in making the loan has now become a reality.

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### **Dealer now enters into the scenario**

**Tractor value:** \$20,000

Dealer adds value through **their** parts & labor: \$25,000

**Tractor Value** (after dealer repair): \$45,000

Increase in value of property through dealer repair: \$25,000

Under current law, if the tractor is foreclosed on and sold for \$45,000, the bank would get \$31,500 and the dealer would only get \$13,500 (30%). The Dealer added \$25,000 in parts & labor but, they only get \$13,500.

**Net result: the bank gets \$11,500 of the dealer's parts & labor!!**

Even with HB 1366 being Passed, the bank would still get **\$11,500** of the dealer's parts & labor.



HB 1366 allows the lenders to continue to be very well protected with the 30% thresholds. Any repairs that exceed this value, assuming it is greater than the dollar threshold, would require the dealer to contact the bank and **ask for their permission** to allow the entire repair bill to have first priority.

HB 1366 provides repairmen with the ability to dispose of property that has been abandoned and left in the dealers' possession. This bill allows repairmen a better method through which they may dispose of or sell abandoned vehicles and equipment while still protecting the interests of all involved parties through waiting periods, updating the current lien priority thresholds, and requiring the repairmen to provide notice to all parties.

I have three dealers here to testify and provide some real-world examples of the need for this bill. However, I would be happy to try to answer any questions.

Thank you for the opportunity to testify. We respectfully request a DO PASS on this legislation.

Matthew C. Larsgaard, MBA  
Automobile Dealers Association of North Dakota  
Pioneer Equipment Dealers Association

# HB 1366 Explanation

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Page 1, Section 1, line 15. Section 35-13-01 states that a Repairman that repairs certain property has a lien on that property for reasonable charges for work done and materials furnished...essentially the parts and labor they put into that property. The amendment on line 15 will include storage fees and transportation costs as part of the lien. Current language, on line 14, requires the storage and transportation charges must be "reasonable". Repairman are not allowed to price gouge.

This amendment is important for several reasons:

## TRANSPORTATION

In some cases, transportation is an absolutely necessary function in order to repair property:

- 1) Some vehicles in need of repair have to be towed in to the dealer. Some of our dealers have tow trucks and pick up the vehicle, but others need to hire a tower to pick up the vehicle. In this situation, it is usually the dealer that actually pays the tow truck company. The dealer then simply adds the tow truck charge to the vehicle repair order.
- 2) Regarding farm equipment, in some cases, a dealer is required to pick up a tractor or combine and bring it back to the dealership for repair, or, and in most cases, they drive their service trucks to the location of the equipment and perform the repair. This is a cost for dealers, and they need a way to recover it.

## STORAGE

The storage of vehicles and equipment is also a cost that needs to be recovered by dealers for several reasons:

- 1) Dealers must purchase and maintain adequate lot space in order to store vehicles and equipment that are either 1) repaired or, 2) are waiting to be repaired.
- 2) Dealers must maintain, preserve, and protect vehicles and equipment they are storing. If the property is damaged while it is being stored, the dealer is the one that generally must pay to fix the damage.
- 3) Many other businesses, including tow truck companies, charge storage. This is a reasonable business practice and this bill recognizes that.
- 4) The bill requires that storage charges MUST be "reasonable". Repairmen are not allowed to charge inflated storage fees. It is important to note that the word "reasonable" is used throughout the NDCC and is also used 49 times in Title 9 of the UCC.

*continued....*

# HB 1366 Explanation

Page 1, line 16 adjusts for inflation the lien priority thresholds.

Page 1, lines 22-24 adds a level of consumer protection by prohibiting a repairman from charging storage until 15 days after the owner was asked to come and get the property.

Page 2, lines 19-31 and Page 3, lines 1-4 outline the process a repairman must follow before they begin a judicial disposition of the property.

Page 3, lines 7-13 are simply cleanup language.

Page 3, lines 17-21 allow the dealer to conduct a nonjudicial disposition of the property. The entire disposition process must adhere to the requirements set forth within the Uniform Commercial Code. It is our understanding that this is the same process lenders must use in order to dispose of repossessed property.